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L.P., LVNV FUNDING, LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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DONNA GARCIA

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Plaintiff,

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vs.

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RESURGENT CAPITAL SERVICES L.P.,
LVNV FUNDING, LLC, THE
BRACHFELD LAW GROUP, P.C. a.k.a.
BRACHFELD & ASSOCIATES, P.C. and
DOES 1-10,

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Defendants.

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} Case No.: 11cv-01253 EMC

} DEFENDANT RESURGENT CAPITAL
SERVICES, LP'S AND LVNV
FUNDING, LLC'S NOTICE OF
MOTION, NOTICE OF ADOPTION OF
DEFENDANT BRACHFELD LAW
GROUP, P.C.'S MOTION FOR
SUMMARY JUDGMENT PURSUANT
TO FRCP RULE 56(c)(2) AND
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES

} Date: March 23, 2012

} Time: 1:30 p.m.

} Hon. Edward M. Chen

} Complaint Filed: March 15, 2011

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I. NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

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PLEASE TAKE NOTICE THAT at the date and time referenced above, or soon
thereafter as the Court may hear this matter, in the Courtroom of the Honorable Edward
M. Chen, located at the United States Courthouse, Courtroom 5, 17th Floor, 450 Golden
Gate Avenue, San Francisco, California 94102, defendants Resurgent Capital Services
LP and LVNV Funding LLC (collectively "LVNV") will and hereby do adopt defendant

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1 Brachfeld Law Group PC's ("Brachfeld") motion for summary judgment and LVNV
 2 hereby moves the Court for an order, pursuant to Rule 56(c)(2) of the Federal Rules of
 3 Civil Procedure, dismissing plaintiff's complaint.

4 This motion is made on the grounds that plaintiff's Fair Debt Collection Practices
 5 Act-based ("FDCPA") claims fail as a matter of law, because plaintiff has not alleged,
 6 and cannot allege, facts sufficient to establish that Brachfeld ever attempted to collect the
 7 debt described in plaintiff's complaint, and any other alleged conduct toward plaintiff by
 8 LVNV occurred before the one (1) year statute of limitations for FDCPA claims and the
 9 California Rosenthal Fair Debt Collection Practices Act ("RFDCPA")

10 This motion will be based on this Notice of Motion, Notice of Adoption of
 11 Brachfeld Motion, the Brachfeld Motion, the Memorandum of Points and Authorities in
 12 support of the Brachfeld Motion, the Brachfeld Separate Statement Undisputed Facts and;
 13 all other papers on file in this action; and such other and further evidence or arguments as
 14 the Court may allow.

15 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

16 As discussed in Brachfeld's moving papers which LVNV adopts in their entirety
 17 for the purpose of this motion, plaintiff has failed to properly allege a cause of action
 18 against all LVNV because (1) any supposedly actionable conduct by LVNV relating to
 19 the debt described in plaintiff's complaint occurred before the one (1) year statute of
 20 limitations for FDCPA and RFDCPA claims, (2) and LVNV's nominal agent, Brachfeld,
 21 never attempted to collect on the debt described in plaintiff's complaint, a debt allegedly
 22 arising from plaintiff's former husband purchase of aluminum siding. Plaintiff has not
 23 alleged any facts to state a *prima facie* case that LVNV have any potential FDCPA and/or
 24 RFDCPA liability relating to the debt identified in plaintiff's complaint.

25 Accordingly, as the undisputed facts in support of Brachfeld's motion also entitle
 26 LVNV to summary judgment as well, LVNV adopts Brachfeld's motion in its entirety.
 27 See, California Practice Guide; Federal Civil Procedure before Trial (Rutter Group 2011)

1 Chapter 12, section 12:27, p. 2941; *Vazquez v. Central States Joint Board* (ND IL 2008)
 2 547 F.Supp.2d 833, 867 (“It is permissible for a party to adopt the motion of another
 3 party when the facts between the parties are essentially the same and the adoption would
 4 promote judicial efficiency.”)

5 As discussed above, plaintiff alleges that Brachfeld and LVNV are debt collectors.
 6 The only distinction being that plaintiff contends that LVNV is vicariously liable for
 7 Brachfeld’s conduct. While this distinction affords LVNV an additional grounds for a
 8 motion for summary judgment because Brachfeld was an independent contractor whose
 9 conduct LVNV did not control or direct, for the purpose of this motion, there is no
 10 significance to the distinction. Plaintiff has not stated a cause of action for an FDCPA
 11 claim or RFDCPA claim based upon the allegations in her complaint and her admission
 12 at her deposition that the debt described in the complaint is not the subject of this action.

13 **III. CONCLUSION**

14 The Court should grant LVNV’s and Resurgent’s Rule 56(c)(2) motion for
 15 summary judgment as to the claims for violation of the FDCPA and RFDCPA because
 16 plaintiff has failed to allege facts that (1) any of LVNV’s conduct relating to the debt
 17 alleged in the complaint occurred within the 1 year statute of limitations; and (2)
 18 Brachfeld’s alleged conduct within the 1 year statute of limitations did relate not to or
 19 arise out of the debt described in plaintiff’s complaint.

20 DATED: February 15, 2012

HINSHAW & CULBERTSON LLP

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 22 By: /David I. Dalby
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 24 Attorneys for LVNV RESURGENT
 25 CAPITAL SERVICES L.P., LVNV
 26 FUNDING, LLC
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